IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1471 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

TALUKA DEVELOPMENT OFFICER

Appearance:

1. First Appeal No. 1471 of 1982

Mr.G.L. Shukla, ASSISTANT GOVERNMENT PLEADER for the appellant.

NOTICE SERVED for Respondent No. 1

MR JA ADESHRA for Respondent No. 2-3

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 12/09/2002

ORAL JUDGEMENT

The present First Appeal is filed being aggrieved of the judgement and decree dated 28.4.1982 passed by the

learned Judge, Court No.8, City Civil Court, Ahmedabad in Civil Suit No.604 of 1978.

2. The plaintiffs had filed the suit with the prayer that it may be declared that Order No.TP/ JMN/ GH/ SR/ WS/ 3025 dated 11.1.1978 passed by the Taluka Development Officer of Dascroi is illegal, ultra vires, void and against the principles of natural justice and that the defendants may be restrained by an order of permanent injunction from enforcing and executing the same.

3. Short facts leading to the filing of the suit, taken from the judgment of the learned Judge, are as under.

3.1 The plaintiffs are in possession and occupation of S.Nos.709/1-2 and 710 of village Ramol, Taluka Dascroi. The plaintiffs are in possession of the aforesaid survey numbers on the strength of the Banakhats dated 20.5.1972 and 18.6.1973 and also an agreement dated 15.2.1975. It is averred in the plaint that Mia Saheb Huseinmiya are the original owners of the said property and they executed the above Banakhat and agreements in respect of their lands bearing S.Nos.709/1 and 709/2, 710, 711 and 712 and other survey numbers which are not relevant for our propose. It is further averred in the plaint that the plaintiffs have paid a sum of Rs.38,500/in pursuance of the said agreement to the owners and that the plaintiffs have also filed a suit for specific performance of the strength of the said Banakhats and agreement against the original owners. It is averred in the plaint that the owners of the said land do not want to execute the documents in pursuance of the same and want to put off execution of the document indefinitely. It is also averred in the plaint that the plaintiff no.1 had imported certain machineries and has erected construction on the said land and has housed his valuable machinery in the above said land. It is further averred in the plaint that since the plaintiffs had put construction over the land, necessary Non Agricultural (NA) permission and all other things were required to be done by the original owners but they are avoiding to do so. It is also averred in the plaint that necessary NA permission was also applied for by the plaintiffs under the signature of the original owners. It is further averred in the plaint that the plaintiffs got one general Power of Attorney executed by the original owners in favour of Kantilal Ganpatram Bhatt who was the man of the plaintiffs but the said Kantilal Ganpatram Bhatt had colluded with the original owner and has not even informed the plaintiffs about fact of the NA application.

It is averred in the plaint that the plaintiffs are in actual occupation of the land and not the owners. It is further averred in the plaint that the plaintiffs have applied to the District Development Officer, Ahmedabad seeking N.A. permission in respect of the land in question. The said application was received by the District Development Officer on 16.1.1975. In token of this having received the same, the District Development Officer has put his endorsement on the copy of the said application but thereafter no sanction either of refusal or of granting of the application within 98 days from the receipt of the said application was given. It is also averred in the plaint that in view of the aforesaid facts as per section 65 of the Bombay Land Revenue Code, permission sought for is deemed to have been granted by the District Development Officer. It is further averred in the plaint that from 16.1.75 which is the date of the receipt of the application on initiation has been received by the plaintiff till the completion of 8 months. Hence as per the provisions of the Bombay Land Revenue Code, permission is deemed to have been granted and once the permission is granted for the purpose of which the same is sought for, the same cannot be in negative and in that view of the fact the impugned order dated 11.1.78 is illegal, unauthorised, arbitrary, bad in law and against the principles of natural justice.

3.2 It is further averred in the plaint that the Taluka Development Officer, Dascroi, defendant no.2 herein passed some order dated 11.1.78 without hearing the plaintiff in respect of the rent of N.A. permission. It is averred in the plaint that the said order is illegal, ultra vires and void; that in the said order the Taluka Development Officer had stated that an opportunity was given to the original owners but no opportunity was given to actual occupants, i.e., the plaintiffs and that the said order is passed at the instance of and in collusion of the original owners as well as Kantilal Bhatt and that the said order is illegal and is not in accordance with the provisions of the Bombay Land Revenue Code and that it cannot be enforced or implemented by the defendants. It is also averred in the plaint that no Panchnama is prepared; that nobody had come to the site and that the order is wrong and illegal. It is further averred in the plaint that the defendants are likely to implement the said order and remove the construction thereon. It is further averred in the plaint that the plaintiffs have put up their factory on the said land and have spent more than Rs.80,000/-, after construction and machinery which is installed therein and that it is also averred in the plaint that the construction if removed as

per the order dated 11.1.78 the present plaintiffs will be put to a great difficulty and hardship and hence it is prayed that it may be declared that the order No.TP/ JMN/ GH/ SR/ WE/ 3025 dated 11.1.78 passed by Taluka Development Officer of Dascroi is illegal, ultra vires and void and against the principles of natural justice and that the defendants may be restrained by order of permanent injunction from enforcing and executing the same.

4. The learned Judge framed issues, issue No.2 is in this regard, which reads as under:

"Is it proved that the order No.TP/ JMN/ GH/ SR/ WJ/ 3025 dated 11.1.78 passed by the second defendant is illegal, against the principles of natural justice and void?"

The learned Judge recorded his finding to this issue in affirmative.

5. I have perused the discussion contained in para 5 onwards. The learned Judge has recorded a categorical finding that in view of the provisions of section 65 of the Land Revenue Code, it is clear that in the instant case the plaintiffs were entitled to put the land to NA use as the defendants have not informed the plaintiffs the decision in respect of the plaintiffs' application, exh.30 within three months of this application. It is further recorded by the learned Judge that,

" .. .. It appears that the order passed by the Taluka Development Officer, Dascroi vide exh.35 dated 11.1.78 was passed after two years and a half from the reply from Panchayat and Health Deptt. vide exh.31 dated 15th July 1975. It does not appear that the plaintiffs were at any time heard in connection with this application at exh.30 before passing any order. Apart from it if we were to refer to section 65, it clearly states that if the occupation of the land wishes to use his holding or any pat thereof for any other purpose the Collector's permission shall, in the first place, he applied for the occupant. It further states that the Collector on receipt of such an application shall send to to the applicant a written acknowledgment of its receipt and may after due inquiry either grant or refuse the permission applied for. In this instant case there is nothing to show that there was any inquiry held by the District Development

Officer or the Taluka Development Officer who has passed order at exh.35. .. .."

(emphasis supplied)

6. The learned Assistant Govt. Pleader, Mr.Shukla though tried his best with all vehemence to assail the judgement and decree passed by the learned Judge, could not successfully do the same. In the result the First Appeal is dismissed. No order as to cost.

(Ravi R. Tripathi, J.)

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